

REMARKS

The Office has required restriction in the present application as follows: Group I (i) Claims 1-11, 15 and 16 drawn to a method of measuring an analyte contained in a heterogeneous sample mixture and kit therefor and (ii) Claims 12-16 drawn to a method of measuring an analyte contained in a sample subjected to dilution and separation procedures and kit therefor. Applicants elect, with traverse, Group I, Claims 1-11, 15 and 16 drawn to a method of measuring an analyte contained in a heterogeneous sample mixture and kit therefor.

The Examiner has indicated that Inventions I and II are independent and is distinct because they have different modes of operation and different effects in that Invention I incorporates all the reagents with a sample to form a reaction system that does not require separation of the complexes to measure the amount of analyte whereas Invention II dilutes the sample and incorporates all the reagents with sample to form a reaction system which is subsequently separated in order to measure the amount of analyte in the system present in the sample.

Applicants respectfully traverse the restriction requirement on the grounds that no adequate reasons and/or examples have been provided to support a conclusion of patentable distinctness between the identified groups or shown that a burden exists in searching all of the claims. Applicants point out that while dilution and separation procedures are different between the two groups they both contain the essential procedure of measuring an analyte containing a sample of whole blood and a reaction which proceeds in the presence of a detergent and in a state that the blood cells are not disruptive. Hence Invention Groups I and II are related and should be examined together. Furthermore it would appear that a search of Invention Group I which involves measuring an analyte in a heterogeneous sample in the

presence of a detergent would necessarily uncover art involving the procedures of Group II since Group II also includes this essential measuring step.

Moreover the M.P.E.P. in § 803 states as follows:

“If the search and examination of an entire application can’t be made without a serious burden, the Examiner must examine it on the merits even though it includes claims to distinct or independent inventions.”

Applicants respectfully submit that a search of all the claims would not impose a serious burden on the Office.

Accordingly and for the reasons presented above, Applicants submit the Office has failed to meet the burden necessary in order to sustain the restriction requirement.


Withdrawal of the restriction requirement is respectfully requested.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits. An early notice of such action is earnestly solicited.

Respectfully submitted,

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